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April 22, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th St. SW
8th Floor
Washington, DC 20554

Re: Private Wireless Coalition Request for Delay of 700 MHz Auctions
WT Docket No. 99-168
WT Docket No. 02-55
GN Docket No. 01-74

Ex Parte Communication

Dear Chairman Powell:

The Spectrum Clearing Alliance (the "Alliance"),¹ by its attorneys, hereby opposes the April 16, 2002 *ex parte* request of the Private Wireless Coalition ("PWC") for an indefinite delay of the upper 700 MHz auction (Auction No. 31).² PWC's request would require the Commission to ignore clear Congressional directives; it would undermine years of regulatory effort to reallocate the 700 MHz band and promote voluntary band clearing; it is based entirely on PWC's speculation regarding uncertain alternative uses of the upper 700 MHz band; and it would directly and substantially harm the interests of public safety agencies and the public generally. If the upper 700 MHz auction is held on June 19, 2002, the Alliance is confident that the band will be cleared. A delay in the auction, however, will spell the end of both the Alliance and upper 700 MHz band-clearing. PWC has provided the Commission with absolutely no reason to support that result. PWC's Delay Request must be denied, and **the upper 700 MHz auction must not be delayed.**

¹ The Alliance was formed to promote and facilitate the timely clearing of the upper 700 MHz band in accordance with the voluntary band-clearing mechanisms developed by the Commission. In addition to Paxson Communications Corporation ("Paxson"), the Alliance includes a significant and increasing number of upper 700 MHz broadcasters operating throughout the United States, including Univision Communications ("Univision"). Paxson's 19 stations and Univision's 16 stations in the band comprise approximately 40% of the encumbered broadcast spectrum. As the auction date approaches, the Alliance continues to add members at an accelerating pace.

² See Letter to Chairman Powell from the Private Wireless Coalition, April 16, 2002 (the "Delay Request").

It has been five years since Congress directed the Commission to reallocate the upper 700 MHz band for use by public safety agencies and commercial wireless service providers.³ Since then, the Commission's plans for the upper 700 MHz spectrum have been the subject of numerous rounds of notice and comment rulemaking. The Alliance, its members, and dozens of other parties have filed with the Commission many comments, reply comments, petitions and other pleadings that resulted in the adoption of final allocation and service rules for the upper 700 MHz spectrum. The Commission also recently completed the proceeding in which it adopted the auction procedures that will be used to award new commercial wireless licenses in the band.

A critical part of the new rules for the upper 700 MHz spectrum are the mechanisms adopted by the Commission to promote voluntary band clearing by incumbent broadcasters. Paxson and other Alliance members have used those mechanisms and devoted considerable time and resources toward the realization of the Commission's band clearing goals. For example, Paxson recently filed several regulatory requests that should lead to clearing stations from the upper 700 MHz band, and one such request already has been granted. The Alliance understands that its other members will file similar requests very soon. Finally, the Wireless Telecommunications Bureau already rejected a request to delay the upper and lower 700 MHz auctions filed by the Cellular Telecommunications & Internet Association.⁴ If the upper 700 MHz auction is held on June 19, 2002, the Alliance is confident the band will be cleared.

Conversely, yet another delay in the auction will mean the end of both the Alliance and upper 700 MHz band-clearing. PWC has not and cannot offer any supportable basis for causing these consequences.⁵ To the contrary, the sole justification PWC offers for delaying the upper 700 MHz auction is the possibility that participants in the Commission's 800 MHz Public Safety Proceeding⁶ may propose solutions to public safety interference problems that could require use of the upper 700 MHz band.⁷ PWC does not advocate any particular proposal, because no actual proposals have been made. Instead, PWC asks the Commission to delay the auction to see what parties to 800 MHz proceeding might decide to propose. PWC admits, as it must, that any 800 MHz interference solution utilizing the upper 700 MHz spectrum would face "a number of technical, economic, and legislative issues which must be addressed," and that the Commission

³ See e.g. Service Rules for the 746-764 and 776-794 Bands and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, 15 FCC Rcd 476, 534 (2000); *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845, 20860-72 (2000); *Third Report and Order*, 16 FCC Rcd 2703, 2705, 2717-18 (2001); *Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633, 21640 (rel. September 17, 2001).

⁴ Letter to Mr. Thomas E. Wheeler from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, DA 02-857 (rel. April 11, 2002).

⁵ See Delay Request at 2.

⁶ See Improving Public Safety Communications In The 800 MHz Band/Consolidating The 900 MHz Industrial/Land Transportation And Business Pool Channels, *Notice of Proposed Rulemaking*, WT Docket No. 02-55, FCC 02-81 (rel. Mar. 15, 2002) (the "800 MHz Public Safety Proceeding").

⁷ See Delay Request at 2.

may determine ultimately that no 800 MHz solution that utilizes upper 700 MHz spectrum is in the public interest.

These vague and uncertain possibilities offered by PWC stand in stark contrast to the clarity of the statutory directive governing the Commission's treatment of the upper 700 MHz band⁸ and the band-clearing regulatory regime already in place. PWC is, in effect, asking the Commission to throw away the substantial work that has been done to ensure clearance of the upper 700 MHz band and introduction of public safety and new wireless services, in favor of the hope that some party may provide a silver bullet solution to 800 MHz public safety interference problems that requires the use of upper 700 MHz spectrum. There is simply no basis in reason for granting such a wholly speculative request at this late date.

Moreover, although PWC portrays its Delay Request as aiding resolution of 800 MHz public safety interference,⁹ adhering to the June 19, 2002 auction date actually is far more likely to provide timely relief to spectrum-starved public safety entities. Band-clearing is ready to begin – indeed it has begun – and its success requires the continued regulatory certainty that a firm auction date provides. It could be years before PWC's unspecified 800 MHz proposals are hammered into anything near the coherent and definite form that band-clearing has today. Surely public safety operators should not be forced to wait indefinitely for an uncertain outcome when Congress has determined that they be granted spectrum in the upper 700 MHz band.¹⁰ The public also has waited long enough for the introduction of new wireless services in the upper 700 MHz band. Indeed, PWC does not even mention the substantial public detriment that would be created by a further delay in the introduction of such services.

PWC's Delay Request must be denied. The Commission must follow the law and stick to the choices it has made; there is no other way to accomplish band-clearing or the introduction of new services in the upper 700 MHz band. PWC offers no viable alternative, only further confusion and delay. Because there can be no way to justify or rationalize a sixth delay

⁸ See 47 U.S.C. § 337(a); Consolidated Appropriations Act, 2000 Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, § 213.

⁹ See Delay Request at 2.

¹⁰ See 47 U.S.C. §§ 309(j)(14); 337(a), (b).

The Honorable Michael K. Powell
April 22, 2002
Page 4

in the upper 700 MHz auction, the FCC must reaffirm again that the upper 700 MHz auction will be held as scheduled on June 19, 2002.

Sincerely,

SPECTRUM CLEARING ALLIANCE

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